

Refusing a request: writing a refusal notice

Freedom of Information Act

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains when and how to refuse a request made under the Freedom of Information Act.

Overview

- Public authorities have two basic duties under FOIA; to confirm or deny whether requested information is held and to provide the requester with that information. If a public authority is refusing to meet either of these duties it will usually need to issue a refusal notice to the requester explaining why.
- If a public authority intends to refuse a request on the grounds that it is subject to an exemption in Part II of the Act, or would exceed the cost limits under section 12, then it must always issue the requester with a refusal notice informing them of its decision.
- A public authority relying on a claim that section 14 applies must issue a refusal notice unless it has already done so in response to an earlier vexatious or repeated request from the same individual, and it would be unreasonable to issue another one.
- The refusal notice will need to state the section of FOIA being relied upon and in most instances explain the reasons for its decision, including the details of any public interest and prejudice tests.
- If the public authority has an internal complaints procedure then the refusal notice must provide the requester with the relevant details.
- The refusal notice must inform the requester of their right to complain to the Information Commissioner.

- The public authority should issue its refusal notice no later than 20 working days after the date of receipt of the request.
- If the public authority needs further time to consider the public interest test then it can issue an initial refusal notice explaining why the exemption applies and giving an estimated date by which the public interest test will be completed. Once the public interest test has been completed then, if the public authority still intends to withhold information, it will need to issue a further refusal notice explaining its application of the public interest test.
- Where the requester has asked for their own personal data, we would expect the public authority to treat this as a subject access request under the Data Protection Act 1998, rather than issuing a refusal notice under section 40(1) of the FOIA.

What FOIA says

5. When a public authority receives a request made under the Freedom of Information Act then it must either:
 - provide the information to the requester;
 - write back to the requester to inform them that the information is not held;
 - refuse to confirm or deny whether information is held; or
 - confirm that information is held but refuse to provide it.
6. If the public authority refuses to confirm or deny whether information is held, or refuses to provide information, then it will usually need to send the requester a refusal notice explaining why.
7. A public authority may only refuse a request if the information is subject to an exemption in Part II of the Act, would exceed the appropriate cost limits under section 12 or is vexatious or repeated under section 14.

Explaining why the request has been refused

8. The refusal notice should firstly make clear that the request was considered under the Freedom of Information Act 2005.
9. Public authorities should not make assumptions about the requester's level of background knowledge when drafting a refusal notice. It is therefore good practice to use plain English and avoid the use of jargon or abbreviations whenever possible.

Refusing a request because of a Part II exemption

10. Sections 17(1) and 17(3) state:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. Further guidance on how to apply the exemptions in part II of the Act can be found in our [Guide to Freedom of Information](#). The guide includes explanations of the differences between class and prejudice based exemptions and qualified and absolute exemptions. It also includes an explanation of how the exclusion from the duty to confirm or deny works in practice.
12. If a public authority is refusing a request because it has decided that a Part II exemption applies then its refusal notice will usually need to include the following information:
 - The exemption(s) on which the authority is relying, including section, subsection, and wording of the exemption concerned.
 - The reasons why the exemption applies.

AND, where applicable
 - A breakdown of the public interest factors which were taken into account.
 - The reasoning behind the authority's conclusion that the public interest lay in maintaining the exemption.
13. The explanation in the refusal notice should be detailed enough to give the requester a real understanding of why the public authority has chosen not to comply with the request. This will usually mean explaining the following things in some detail:
 - if a prejudice based exemption has been claimed, exactly how disclosing the information, or confirming or denying whether it is held, would lead to the prejudice set out in the exemption; or
 - if a class based exemption has been claimed, exactly how the information requested, or confirmation or denial that would need to be provided, meets the test set out in the exemption
 - When the exemption is qualified by a public interest test, all the matters taken into consideration and an explanation of why the public interest has been found to favour withholding the information or refusing to confirm or deny whether it is held.
14. In most cases it will be possible to do this without any problem. There should be relatively few cases where it isn't possible to

explain in detail why an exclusion from the duty to confirm or deny has been applied or why the information has been withheld.

15. In the few cases where it would undermine the purpose of claiming the exemption to explain why the request has been refused, section 17(4) of the Act allows this detail to be left out of the refusal notice.
16. Section 17(4) states:

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

17. If the reasons for the decision are particularly complex or several exemptions were applied then it may be advisable to split the notice into shorter subsections to make it easier for the requester to follow.

Refusing a vexatious or repeated request

18. Further guidance on when a request can be considered to be vexatious or repeated can be found in the Guide to Freedom of Information or via our Guidance Index.
19. Sections 17(5) and 17(6) state:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

20. Under section 17(5), a public authority relying on a claim that section 14 of the FOIA applies will usually need to issue a refusal notice stating that the request has been refused on the grounds that it is vexatious or repeated.
21. There is no requirement for the authority to provide the requester with any further explanation of why it has reached this conclusion. Public authorities may wish to consider providing more explanation, but will need to judge whether is likely to help matters or make them worse.
22. Section 17(6) of the Act allows a public authority not to issue a refusal notice at all when both the following conditions are met:
 - the public authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
 - it would be unreasonable to issue another one.
23. The ICO will usually only consider it unreasonable to issue a further notice when an authority has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.

Refusing a request because answering it would exceed the costs limit

24. Further guidance on how to establish whether a request exceeds the costs limit can be found in the [Guide to Freedom of Information](#) or via our [Guidance Index](#).
25. Sections 17(5) states:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

26. If a public authority is refusing a request under section 12 then it must send the requester a refusal notice stating that the request is being refused under section 12 because compliance would exceed the appropriate cost limit.

27. There is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded.
28. However, although there is no requirement under section 17(5) for the refusal notice to provide further explanation, public authorities have a duty under section 16 of FOIA to provide requesters with advice and assistance.
29. Section 16 states:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

30. The section 45 Code of Practice states:

- (14) Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee.

31. The Commissioner considers that the best way to meet this requirement will usually be to include a breakdown of the costs involved in meeting the request, and an indication of what could be provided under the limit, as part of the refusal notice.

Information about the appeals procedure

32. Section 17(7) states:

(7) A notice under subsection (1), (3) or (5) must

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

33. The refusal notice must state whether or not the public authority has an internal review procedure through which the requester can appeal its decision.
34. Although there is no statutory requirement to offer an internal review under the FOIA, we recommend that all authorities should have an appeals procedure in place so that they conform to FOIA [Section 45 Code of Practice](#) guidelines.
35. If the authority does offer an appeals procedure then it must provide the details in its refusal notice to include:
 - Contact information for the relevant department or member of staff.
 - An outline of the appeals process.
 - Timescales for dealing with complaints.
36. Further information about the internal review process is available from [our guidance pages](#).
37. The notice must also advise the requester of their right to make a complaint to the Commissioner and should include the relevant contact details for the ICO.

Time limits for issuing a refusal notice

38. A public authority must issue its refusal notice as soon as practicable and within the time limit provided at section 10 of the Act. The time limit for most public authorities is 20 working days after the date they receive a request, but a public authority should not wait until the 20th day to respond if it can reasonably provide the notice earlier.
39. Some public authorities are subject to a different time limit (for example schools don't have to count school holidays as working

days). For more detail on this please refer to The Freedom of Information ([Time for Compliance with Request\) Regulations 2004.](#)

Time extensions to consider the public interest test

40. Section 17(2) states:

(2) Where-

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3) and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 ,

The notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

41. There is provision within the Act for a public authority to claim an extension to the statutory 20 working day limit.
42. This extension may be claimed where the authority requires more time to determine whether or not the balance of the public interest lies in maintaining the exemption
43. An authority may also claim an extension if it needs additional time to consider whether it would be in the public interest to confirm or deny whether the information is held.
44. The Act does not set a specific limit on the amount of additional time the public authority can take to consider the

test, only stating that the notice communicating its final decision must be provided within 'such time as is reasonable in the circumstances'.

45. Our position is that a public authority should take no more than an additional 20 working days to consider the public interest, which means that the total time spent dealing with the request should not exceed 40 working days.
46. Where the authority does require an extension of time, it must issue an initial refusal notice, within 20 working days, explaining why the exemption applies and giving an estimated date by which the public interest test will be completed.
47. It is important to remember that the extension only gives extra time to consider the public interest test. A public authority cannot claim additional time to consider whether the exemption(s) are engaged.
48. Once the authority has come to a final decision about the public interest then it must either:
 - disclose the relevant information to the requester; OR
 - issue a notice explaining why it has found that the public interest to be weighted in favour of maintaining the exemption/neither confirming or denying that the information is held.
49. In effect, therefore, the authority may need to issue two refusal notices; the first to explain that an exemption is engaged and to advise that the public interest test is still being considered, and the second to communicate its final decision. Both notices should provide details of the appeals procedure

Dealing with a request for the requester's own personal data

50. Section 40(1) of the FOIA exempts public authorities from the requirement to make available any information which is also the requester's own personal data.
51. However, we would not usually expect a public authority receiving such a request to issue a refusal notice under Section 40(1) the FOIA. Rather we would expect the public authority to advise the requester within 20 working days that it intends

to treat the request as a subject access request (SAR) made under the Data Protection Act 1998.

52. The requester should not be required to submit a separate information request, although as with any SAR, the authority will be entitled to write back to the requester if it requires further identification or a fee before it can process the request.
53. Sometimes requests are made for a broad category of information that includes some of the requester's own personal data and some other information. In this situation, if some of the 'other' information is being refused under a different FOIA exemption, it will make sense for the refusal notice to also explain that the applicants own personal data is exempt under section 40(1) FOIA and will be dealt with under the Data Protection Act.
54. More information about how to deal with a request for personal information can be found in our [Guide to Data Protection](#).

The benefits of issuing a good refusal notice

55. There are a number of benefits to providing as much explanation as possible when issuing refusal notices.
 - It will help to enhance the authority's reputation.
 - The authority may receive fewer applications for internal review, because the requester will have a better understanding of why their request has been refused.
 - This should in turn result in fewer complaints being made to the Commissioner about the handling of requests.
 - When investigating a complaint, the Commissioner may consider the quality and timeliness of a refusal notice, including how well the application of any exemptions has been explained.
 - If an appeal is made to the Information Tribunal against a decision notice, the tribunal may consider the quality of the authority's refusal notice.
 - It will help the authority to conform to the section 45 Code of Practice.

More information

56. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
57. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
58. If you need any more information about this or any other aspect of freedom of information, please [contact us: see our website www.ico.gov.uk](http://www.ico.gov.uk).